IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2481 OF 2005

Walwa Gram Vividha Karyakari Sahakari
(Vikas) Sanstha Ltd. : Petitioner
(Orig. Disputant)

V/s.

Sarjerao Banda Naikawadi (deceased):
1A. Bharati Sarjerao Naikawadi & Ors. : Respondents

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Mr.V.B.Rajure for the petitioner.
None present for the respondents.

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CORAM : S.A. BOBDE, J.

October 5, 2005.

P.C.:

1. This petition is directed against concurrent findings of two Courts below. The respondents' father has not misappropriated a sum of Rs.5,84,041/- and, therefore, the petitioner-society is not entitled to claim the amount by way of this dispute.

2. On going through the order, it is clear that there is a finding of fact based on evidence that the respondents'

father, Sarjerao Banda Naikawadi, who was working as a Salesman of the Fertilizer Section of the society from 1994 to 1997, has not misappropriated the amount and, in any case, there was no evidence that the document which forms the basis of the case against him was written or signed by the deceased Sarjerao. In fact, the Court has come to the conclusion that there is no document to show that Sarjerao was ever appointed as Salesman and incharge of the Fertilizer Section from where he has allegedly misappropriated the amount in question. The petitioner's witness Popat Mane admitted that he has never seen such a resolution. The Courts below have come to the conclusion that there was neither entrustment to Sarjerao nor any defalcation. The petitioner-society has failed to prove any relevant document about the purchase of stock, bills about sale of stock, stock register, sale register and the cash book as well as ledger.

3. In the circumstances, I see no reason to interfere with the findings of the Courts below which are pure findings of fact. The petition is, therefore, dismissed.

S.A. BOBDE, J.